

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

IN RE APPOINTMENT OF UMPIRE,)	
FOR PROPERTY LOSS DISPUTE)	Case No. 17-cv-1952
CONCERNING 3750 Washington Blvd.,)	Division: _____
St. Louis, Missouri.)	

JOINT PETITION TO APPOINT UMPIRE

NOW COME both the insurer, Vigilant Insurance Company, by and through its attorneys, DeFranco & Bradley, P.C., and the insured, Contemporary Art Museum St. Louis, by and through its attorneys, Sher Corwin Winters LLC, and both jointly petition the court to appoint an umpire, as follows:

1. Contemporary Art Museum St. Louis (“insured”) has a policy for insurance with Vigilant Insurance Company (“insurer”) identified as policy number 000035922032 / 00000004 and a dispute has arisen between the parties relative to a claim by the insured for a property loss at 3750 Washington Blvd., St. Louis, Missouri 63108. The dispute involves the value of property and/or the amount of loss and therefore triggers the appraisal process in the policy of insurance.

2. With respect to Appraisal, the insurance policy states, in part:

If you and we do not agree on the amount of the loss or damage, either party may make a written demand for an appraisal of the loss or damage. In this event, you will select and pay a competent and impartial appraiser, and we will select and pay a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree on an umpire, either may request that a judge of a court having jurisdiction make the selection. Each appraiser will separately state the value of the property and amount of loss or damage. If the appraisers do not agree, they will submit their statements to the umpire. Agreement by the umpire and either of the appraisers will be binding on you and us.

You and we will equally share any other appraisal costs of the umpire.

If there is an appraisal, we still retain our right to deny the claim.

(See that portion of policy attached and incorporated herein as Exhibit A).

3. The parties have each selected an appraiser. The insurer selected Steven Gray as its appraiser. The insured selected Mickey L. Jones as its appraiser.

4. Pursuant to the policy of insurance, after the appraisers were selected, the appraisers were to select an umpire. After exchanging potential umpire candidates by E-mail, the appraisers were unable to agree on an umpire.

5. Vigilant is a corporation existing under the laws of the State of New York and its principal place of business in New Jersey. Vigilant is a citizen of the states of New York and New Jersey.

6. Contemporary Art Museum is a Missouri corporation with its principal place of business in Missouri.

7. Complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

8. The parties request appointment of an umpire pursuant to 9 U.S.C. §§ 5-6. *See Liberty Mut. Group, Inc. v. Wright*, 2012 WL 718857 at *1-7 (D. Md. Mar. 5, 2012).

9. The parties agree that by requesting the court to appoint an umpire, Vigilant Insurance Company does not waive any of its rights under the policy or the law, including the right to deny coverage for any items of loss that are not covered by the policy or request direction from the court as to the scope of the appraisal proceeding.

9. As of the date of filing this joint petition, the parties' appraisers have failed to agree upon an umpire, and pursuant to the policy, the parties jointly request that the Court select an umpire.

WHEREFORE, both Contemporary Art Museum St. Louis and Vigilant Insurance Company respectfully request for this Court to select and appoint an umpire to serve and receive compensation as set forth above.

Sher Corwin Winters LLC

DeFranco & Bradley, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July, 2017, I electronically filed **Vigilant Insurance Company's Joint Petition to Appoint Umpire** with the Clerk of Court using the CM/ECF system which will send notification of such filings(s) to the following:

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